

CITY OF FAIRVIEW

BOARD OF COMMISSIONERS

MARCH 2, 2017

7:00 P.M.

AGENDA

1. **Call to order by Mayor Carroll**
 - A. Prayer and Pledge
2. **Approval of the Agenda**
3. **Citizen Comments (Limited to the first 5 citizens to sign in and a limit of 3 minutes each).**
4. **Awards and/or Recognitions**
5. **Public Announcements**
6. **Staff Comments**
7. **Approval of the Minutes (only needed if removed from consent agenda)**
8. **Consent Agenda Consisting of Items as Follows**
 - A. Approval of the Minutes from the February 16, 2017 Board of Commissioners Meeting
9. **Old Business**
10. **New Business**
 - A. Discuss and/or Take Action on Ordinance No. 2017-02, An Ordinance of the City of Fairview, Tennessee, Providing that the Fairview Municipal Code be Amended by Revising Section 4-208 of Chapter 2, Title 4, in Regard to Nepotism – Burks
 - B. Discuss and/or Take Action on FHS Press Box Funding – Crutcher
 - C. Discuss and/or Take Action on Funding Improvements to Fairview Ball Park – Crutcher
 - D. Discuss and/or Take Action on Resolution No. 02-17, An Agreement with City Engineer for Revisions to Subdivision Regulations, Design Review Manual, Zoning Map and Zoning Ordinances
 - E. Discuss Planning Commission – Rainey
 - F. Discuss and/or Take Action on Resolution 01-17, A Resolution Repealing Resolution No. 04-16 and Enactment of a Resolution Requesting the State of Tennessee Amend Tennessee Code Annotated Sections 6-20-101 and 6-20-201, both of Which are Charter Provisions of the City of Fairview, Tennessee.
11. **City Manager Items for Discussion**
 - A. Miscellaneous Updates
 - B. City Attorney Comments
12. **Communications from the Mayor and Commissioners**
13. **Adjournment**

10A

ORDINANCE NO. 2017-02

AN ORDINANCE OF THE CITY OF FAIRVIEW, TENNESSEE, PROVIDING THAT THE FAIRVIEW MUNICIPAL CODE BE AMENDED BY REVISING SECTION 4-208 OF CHAPTER 2, TITLE 4, IN REGARD TO NEPOTISM.

WHEREAS, the Board of Commissioners has determined that the Fairview Municipal Code should be revised and that the best interest and welfare of the all the citizens of the City of Fairview, Tennessee, will be served by amending the Fairview Municipal Code.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF FAIRVIEW, TENNESSEE, AS FOLLOWS:

SECTION 1. That Section 4-208 of Chapter 2, Title 4 of the Fairview Municipal Code is hereby amended to read as follows:

4-208. Anti-Nepotism Policy.

(1) Title. This section shall be cited as the "Anti-Nepotism Policy of the City of Fairview."

(2) Purpose. This policy is not for the purpose of depriving any citizen of an equal chance for employment with the City of Fairview but is solely to prevent the potential for preferential treatment of relatives, as defined in subsection (4)(c).

(3) Applicability.

(a) The prohibitions set forth in this section shall apply solely to employee positions for the City of Fairview.

(b) This section shall not apply to appointments to the various boards, commissions and committees of the City of Fairview.

(c) This section and the prohibition against certain hiring contained herein shall be applied prospectively only from the effective date of its enactment and shall not in any way be construed to prohibit or make unlawful any current employment relationship or situation. However, no person shall be hired, transferred or promoted after the effective date of this policy whose continued employment with the City of Fairview would create a new violation of this policy.

(d) The prohibitions set forth in this section shall not apply in the case of seasonal part-time employment.

(4) Definitions. As used in this section, unless a different meaning appears from the context:

(a) "Elected Official" means any person holding a position on the Board of Commissioners.

(b) "Nepotism" means the practice of favoring, providing benefits to, or giving any workplace preference to a relative over other employees.

(c) "Relative(s)" includes parent, child, sibling, grandparent, grandchild, aunt, uncle, niece, nephew, spouse, daughter-in-law, son-in-law, mother-in-law, father-in-law, stepparent, stepchild, brother-in-law, sister-in-law, domestic partner, cohabitant or a person with whom a significant committed relationship exists including adoptive relationships.

(d) "Supervisor" means any employee of the City of Fairview having supervisory duties and powers over another employee or employees within the respective department of the City of Fairview.

(5) Neptotism Prohibited. The following restrictions shall apply in the hiring and promotion of employees to positions for the City of Fairview:

(a) A relative shall not be hired, promoted or transferred to a regular full-time or regular part-time position where:

(i) One relative would have the authority to appoint, remove, discipline or evaluate the performance of the other;

(ii) One relative would be responsible for auditing the work of the other; or

(iii) Other circumstances exist that place the relatives in a situation of actual or reasonably foreseeable conflict of interest.

(b) No relative shall be considered for employment by the City of Fairview or hired to a position of employment with the City of Fairview where that person will be the supervisor or be supervised by another relative who is an existing employee within the same department.

(c) Applications for employment submitted by relatives of city employees holding current supervisory positions will not be accepted for positions in the same department of the City of Fairview in which the supervisor works.

(d) No person who is a relative of any elected official shall be considered for employment as an employee of the City of Fairview. This shall not restrict nor prohibit the continued employment of individuals in the position held on the effective date of this policy. Further, this shall not restrict nor prohibit the continued employment of individuals in the position held at the time a relative of an employee is elected to a position on the Board of Commissioners after the date of the employee's start of employment with the City of Fairview.

(6) Employees Who Become Relatives. If after the effective date of this policy two employees become relatives in violation of this section, then those employees shall be asked to determine which of them will transfer within ninety (90) days to any vacant position in another department, division or shift for which the employee is qualified and which would resolve the violation. An employee who is allowed to transfer under these circumstances must meet the minimum qualifications of a vacant, budgeted position and must have had an overall satisfactory rating on the last performance evaluation. If such a transfer cannot be arranged within ninety (90) days for either of the employees, then the employees shall be asked to determine which of them will terminate employment. If the event the employees cannot decide between them who will leave, and if a transfer cannot be arranged, then the employee with the higher level of job-related performance for the City of Fairview shall be retained and the other shall be terminated.

SECTION 2. In case of conflict between this ordinance or any part hereof, and the whole or part of any existing ordinance of the City of Fairview, then this ordinance shall supersede same.

SECTION 3. If any section, subsection, clause, provision or portion of this ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, such holding shall not affect any other section, subsection, clause, provision or portion of this ordinance.

SECTION 4. That this ordinance shall take effect from and after its final passage and publication thereof, or fifteen days after its first passage, whichever occurs later, the general welfare of the City of Fairview, Williamson County, Tennessee, requiring it.

ATTEST:

CITY OF FAIRVIEW, TENNESSEE

BY: _____
Brandy Johnson, City Recorder

BY: _____
Patti L. Carroll, Mayor

APPROVED AS TO FORM:

BY: _____
Larry D. Cantrell, City Attorney

Passed First Reading _____

Passed Second Reading _____

Public Hearing Held _____

100

January 17, 2017

Mr. Scott Collins
City Manager, City of Fairview
7100 City Center Way
Fairview, Tennessee 37062

SUBJECT: PROPOSAL FOR PROFESSIONAL SERVICES – UPDATE AND CODIFYING OF CITY PLANNING DOCUMENTS

Dear Mr. Collins:

Griggs & Maloney (G&M) is pleased to offer this proposal to assist the City of Fairview in the codifying and updating of current City planning documents, more specifically the Subdivision Regulations, Zoning Ordinance, Design Review Manual, and Tree Planting and Protection Ordinance.

BASE SCOPE OF WORK

Griggs & Maloney will provide professional services required to codify and update the current parent documents listed above. Specific services are to include:

Zoning Ordinance:

- Research and review of City files to identify all known adopted amendments to the text of the Zoning Ordinance since the last parent document adoption date of September 3, 1998.
- Review of current parent document text against previously adopted BOC amendments discovered above (rezoning actions are not being reviewed under this scope) and incorporation of said amendments into parent document (codification);
- Review of current parent document for completeness, accurate cross-references, direct discrepancies, indirect discrepancies with the City's other planning documents, and appropriate submittal and approval procedures;
- Formalized recommendations to the Planning Commission for their consideration of proposed administrative amendments to the text of the Zoning Ordinance resulting from the review conducted in the above item(s);
- Please note that it is our understanding that the intent of the above reviews and recommendations is not to consider substantive changes, additions, or deletions from the Zoning Ordinance but to provide an updated and codified Zoning Ordinance that reduces discrepancies and/or errors to the greatest extent possible without substantively changing the material requirements of the document.

Subdivision Regulations:

- Research and review of City files to identify all known adopted amendments to the text of the Subdivision Regulations since the last parent document adoption date of 2008.

- Review of current parent document text against previously adopted Planning Commission amendments discovered above and incorporation of said amendments into parent document (codification);
- Review of current parent document for completeness, accurate cross-references, direct discrepancies, indirect discrepancies with the City's other planning documents, and appropriate submittal and approval procedures;
- Review and revise Road Specifications Procedure (appendix to Sub Regs) text and drawings;
- Formalized recommendations to the Planning Commission for their consideration of proposed administrative amendments to the Subdivision Regulations from the review conducted in the above item(s);
- Please note that it is our understanding that the intent of the above reviews and recommendations is not to consider substantive changes, additions, or deletions from the Subdivision Regulations but to provide an updated and codified document that reduces discrepancies and/or errors to the greatest extent possible without substantively changing the material requirements of the document.

Design Review Manual:

- Research and review of City files to identify all known adopted amendments to the text of the Design Review Manual since the last parent document adoption date of September 11, 2007.
- Review of current parent document text against previously adopted BOC and Planning Commission amendments discovered above and incorporation of said amendments into parent document (codification);
- Review of current parent document for completeness, accurate cross-references, direct discrepancies, indirect discrepancies with the City's other planning documents, and appropriate submittal and approval procedures;
- Formalized recommendations to the Planning Commission for their consideration of proposed administrative amendments to the Design Review Manual resulting from the review conducted in the above item(s);
- Please note that it is our understanding that the intent of the above reviews and recommendations is not to consider substantive changes, additions, or deletions from the Design Review Manual but to provide an updated and codified document that reduces discrepancies and/or errors to the greatest extent possible without substantively changing the material requirements of the document.

Tree Planting and Protection Ordinance:

- Research and review of City files to identify all known adopted amendments to the text of the Tree Planting and Protection Ordinance.
- Review of current parent document text against previously adopted BOC amendments discovered above and incorporation of said amendments into parent document (codification);
- Review of current parent document for completeness, accurate cross-references, direct discrepancies, and indirect discrepancies with the City's other planning documents;

- Formalized recommendations to the Planning Commission for their consideration of proposed administrative amendments to the Design Review Manual resulting from the review conducted in the above item(s);
- Please note that it is our understanding that the intent of the above reviews and recommendations is not to consider substantive changes, additions, or deletions from the Design Review Manual but to provide an updated and codified document that reduces discrepancies and/or errors to the greatest extent possible without substantively changing the material requirements of the document.

PROPOSAL COST, TERMS AND CONDITIONS OF BASE SCOPE OF WORK

Griggs & Maloney proposes to perform the aforementioned base scope of services for a not-to-exceed cost of **\$26,000**. Griggs & Maloney will perform the work on a time and materials basis and in accordance with the enclosed Standard Terms and Conditions. Assuming this proposal is accepted and executed at the January 19 Board of Commissioners meeting, we anticipate presenting the recommended revisions to the planning documents at the May Planning Commission meeting.

Griggs & Maloney will work diligently within the bounds of our budget and scope to attend project status meetings and coordination meetings as necessary. Should multiple revision iterations be necessary for the recommended changes to the planning documents as a result of desires from the Board of Commissioners or Planning Commission, Griggs & Maloney will continue to perform work on the project as long as budget remains. Prior approval will be sought before performing any work beyond the budget and scope of work presented herein.

ADDITIONAL OPTIONAL SERVICES

Additionally, the City has asked that we submit a scope of work and proposal for providing professional services to update and digitize the City's current Zoning Map and Proposed Land Use Map.

Zoning Map

The scope of work is to include a review of the current master Zoning Map located at City Hall against all recorded and adopted zoning changes since the master map was printed; conversion of master zoning map to GIS shape files and incorporation of said zoning changes into GIS shape files; updating parcel boundary data to the most current information provided by the County Tax Assessors Office and Register of Deeds office; and providing shape files as well as a pdf file of the updated zoning map to the City.

Proposed Land Use Map

The scope of work is to include a conversion of the current Proposed Land Use Map to GIS shape files to be provided to the City.

PROPOSAL COST, TERMS AND CONDITIONS OF OPTIONAL SERVICES

GRIGGS & MALONEY, INC.
Engineering & Environmental Consulting

Griggs & Maloney proposes to perform the aforementioned optional scope of services for a not-to-exceed cost of **\$4,000**. Griggs & Maloney will perform the work on a time and materials basis and in accordance with the enclosed Standard Terms and Conditions. This project is a lengthy process and we would anticipate needing 120-150 days from the date of proposal acceptance by the City.

Thank you for the opportunity to work with you. We look forward to a successful partnership.

Sincerely,
GRIGGS & MALONEY, INC.



Will Owen, P.E.
Vice President

cc: Bill Griggs, Griggs and Maloney, Inc.
Ryan Maloney, Griggs and Maloney, Inc.

BASE SCOPE ACCEPTED BY

_____ Signature	_____ Name
_____ Title	_____ Date

OPTIONAL SCOPE ACCEPTED BY

_____ Signature	_____ Name
_____ Title	_____ Date

GRIGGS & MALONEY, INC. STANDARD TERMS AND CONDITIONS

1. ACCESS TO THE SITE/JOB SITE SAFETY

Unless otherwise stated, Griggs & Maloney, Inc., hereinafter referred to as the CONSULTANT, will have access to the site for activities necessary for performance of the services. The CONSULTANT will take precautions to minimize damage resulting from these activities, but has not included in the project fee the cost of restoration of any resulting damage.

The CONSULTANT has not been retained or compensated to provide services relating to the CONTRACTOR's safety precautions or means, methods, techniques, sequences or procedures for the CONTRACTOR to perform his work. The CLIENT understands that the CONSULTANT is not responsible, in any way, for the means, methods, techniques, sequences, procedures, scheduling, or for job site safety, and will not be responsible for any losses or injuries that occur at the Project site.

2. INDEMNIFICATION

Should the CONSULTANT become involved in third party litigation as a result of its performance of work for the CLIENT under this Agreement, the CLIENT agrees, to the fullest extent permitted by law, to defend and hold harmless and pay all attorney's fees for the CONSULTANT for such litigation. If any claim is brought against the CLIENT or the CONSULTANT by any third party, relating in whole or in part to the negligence of the CLIENT or the CONSULTANT, each party, to the fullest extent permitted by law, shall indemnify the other against any loss or judgment, including Attorney's fees and costs, to the extent that such loss or expense is caused by the party negligence, the CONSULTANT's liability to the CLIENT is subject to the limitations in Paragraph 4, Risk Allocation/Limitation of Liability. To the fullest extent permitted by law, the CLIENT will reimburse the CONSULTANT for expenses related to claims, including attorney's fees and costs, if the CONSULTANT is proven not to be negligent. In addition, to the fullest extent permitted by law, the CLIENT agrees to defend, indemnify and hold harmless the CONSULTANT, its officers, directors, employees, agents and representatives from and against all liabilities, claims, demands, losses, costs, damages, actions, suits, or other proceedings by whomever made arising out of or in connection with the CONSULTANT's performance of work hereunder made or brought against the CONSULTANT (other than any employee, officer, director, agent or other representative of the CONSULTANT) for any environmental pollution or contamination, including without limitation, any actual or threatened release of toxins, irritants or pollutants, or waste gases, liquids, or solid materials, provided that the CONSULTANT performs hereunder without neglect and does not negligently create, cause contribute to, or aggravate any such pollution or contamination in existence at the Project site.

3. INSURANCE

The CONSULTANT shall secure and endeavor to maintain such insurance as will protect the CLIENT from claims of negligence, bodily injury, death, or property damage that may arise out of the performance of the CONSULTANT's services under this agreement.

4. RISK ALLOCATION/LIMITATION OF LIABILITY

In recognition of the relative risks, rewards and benefits of the Project to both the CLIENT and the CONSULTANT, the risks have been allocated such that the CLIENT agrees that, to the fullest extent permitted by law, the CONSULTANT's total liability to the CLIENT for any and all injuries, claims, losses, expenses, damages, or claim expenses, including attorney's fees, arising out of this Agreement, from any causes, shall not exceed the total amount of \$50,000.00, or the amount of the CONSULTANT's fee for the project, whichever is smaller for any claim arising out of CONSULTANT's negligence, errors, or omissions; and any liability shall only apply to deficiencies discovered within one calendar year after the substantial completion of the project.

5. TERMINATION OF SERVICES:

This Agreement may be terminated by the CLIENT or by the CONSULTANT upon not less than seven days written notice should the other party fail to substantially perform in accordance with the terms of this Agreement through no fault of the party initiating termination. If this Agreement is terminated by the CLIENT, the CONSULTANT shall be paid for services performed to the termination notice date, including reimbursable expenses.

6. REIMBURSABLE EXPENSES:

Reimbursable expenses include actual expenditures made by the CONSULTANT, his employees, or his SUB-CONSULTANTS on behalf of the Project. Reimbursable expenses include, but are not necessarily limited to, the following: (a) expenses of transportation and living when traveling in connection with the Project; long distance communications; overnight mail; and fees paid for testing and/or securing approval of authorities having jurisdiction over the Project; (b) expenses of printing, reproduction, postage and handling of drawings and specifications, including duplicate sets at the completion of each phase of the

GRIGGS & MALONEY, INC. STANDARD TERMS AND CONDITIONS, CONT'D

Project for the CLIENT's review and approval; (c) governmental fees of any type; and (d) expenses related to SUB-CONSULTANTS and specialists when authorized by the CLIENT. Reimbursable expenses shall be billed as cost plus 15% incurred by the CONSULTANT.

7. DISPUTES RESOLUTION:

All claims, counterclaims, disputes and other matters in question between the parties hereto arising out of or relating to this Agreement or breach thereof shall be presented to non-binding mediation, subject to the parties agreeing to a mediator.

8. OWNERSHIP OF DOCUMENTS:

It is understood by and between the parties to this agreement that all drawings, specifications, reports and other work products of the CONSULTANT for this Project shall remain the property of the CONSULTANT and are instruments of the service for this Project only and shall apply to this particular Project and any reuse of the instruments of service of the CONSULTANT by the CLIENT for any extensions of the PROJECT or for any other project without the written permission of the CONSULTANT shall be at the CLIENT's sole risk, and the CLIENT agrees, to the fullest extent permitted by law, to defend, indemnify and hold harmless the CONSULTANT from all claims, damages and expenses, including attorney's fees, arising out of any unauthorized reuse of the CONSULTANT's instruments of service by the CLIENT or by others acting through or on behalf of the CLIENT. Any reuse or adoption of the CONSULTANT's instruments of service on other projects shall entitle the CONSULTANT to additional compensation in an amount to be agreed upon by the CLIENT and the CONSULTANT.

Any electronic design documents or work products that may be provided to the CLIENT will be provided solely as a courtesy and the CONSULTANT makes no representation as to the usefulness of the documents to future or other projects. The CONSULTANT's work products are intended for the sole use of the CLIENT and are not to be used or relied upon by any other party without written consent of the CONSULTANT.

9. GOVERNING LAW:

Unless otherwise specified within this Agreement, this Agreement shall be governed by the law of the State of Tennessee. In the event any provisions of this Agreement shall be held to be invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provision, term, condition or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other party.

10. PAYMENT TO THE CONSULTANT:

Payment is due upon receipt of our invoice. If payment is not received within 30 days from the invoice date, CLIENT agrees to pay a finance charge on the principal amount of the past due account of one and one-half percent per month, and all cost of collection, including attorney fees. If one and one-half percent per month exceeds the maximum allowed by law, the charge shall automatically be reduced to the maximum legal allowable. CONSULTANT reserves the right to cease all work and withdraw its services in the event of non-payment or delayed payment until full payment is completed. Until full payment is completed, CONSULTANT's work product remains the property of the CONSULTANT. Until full payment is completed, use of the CONSULTANT's work product is prohibited, unless other written arrangements have been made between CLIENT and CONSULTANT. CONSULTANT reserves the right to withhold any reports or documents until full payment is made. No deductions shall be made from the CONSULTANT's compensation on account of penalty, liquidated damages, or other sums withheld from payment(s) to CONTRACTORS.

11. CLIENT RESPONSIBILITIES:

The CLIENT shall designate a person to act with authority on his behalf in respect to all aspects of the Project, shall examine and respond promptly to CONSULTANTS submissions, and shall give prompt written notice to the CONSULTANT whenever he observes or otherwise becomes aware of any defect in or problem with the Project.

The CLIENT shall also provide to the CONSULTANT all criteria and full information as to his requirements for the Project, and shall:

- Furnish approvals and permits from all governmental authorities and/or agencies having jurisdiction over the Project.
- Provide the CONSULTANT with escorts and means of access to all areas of the Project; this being necessary for the orderly progress of the work, the CONSULTANT shall be entitled to rely upon the efficiency and completeness thereof.
- Compensate the CONSULTANT for services rendered under this Agreement and pay all costs incidental to CLIENT furnished items.
- The CONSULTANT may justifiably rely upon information supplied by the CLIENT without the need for additional verification by the CONSULTANT.

GRIGGS & MALONEY, INC. STANDARD TERMS AND CONDITIONS, CONT'D

- Provide such legal, accounting, and insurance counseling services as may be required for the Project.
- Guarantee access to and make all independent cost estimating, and insurance counseling services as may be required for the Project.

12. CONFORMITY OF WASTE:

In the event that is determined that all or any part of the CLIENT'S waste does not conform with the information provided by the CLIENT on the profile sheet and/or generator waste analysis from (hereinafter "non-conforming waste") the CLIENT agrees to indemnify and hold harmless CONSULTANT against all cost including but not limited to surcharges, transportation charges, and cost fines, and any subsequent return transport and/or removal of the non-conforming waste.

13. EXTENT OF AGREEMENT:

This Agreement represents the entire and integrated Agreement between the CLIENT and the CONSULTANT and supersedes all prior negotiations, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the CLIENT and the CONSULTANT.

The CONSULTANT intends to render services under the terms of this Agreement in accordance with generally accepted professional practices consistent with the intended use of the Project and makes no warranty either expressed or implied.

Any *opinion of construction* cost prepared by the CONSULTANT represents his judgment as a design professional and is supplied for the general guidance of the CLIENT. Since the CONSULTANT has no control over the cost of labor and material, or over competitive bidding or market conditions, the CONSULTANT does not guarantee the accuracy of such opinions as compared to CONTRACTOR bids or actual cost to the CLIENT.

14. CHANGES IN THE SCOPE OF SERVICES:

The CLIENT may request changes in the *Scope of Services* of the Agreement to be performed hereunder. Such changes, including any increase or decrease in the amount of the CONSULTANT'S compensation, which are mutually agreed upon by and between the CLIENT and the CONSULTANT shall be incorporated into this Agreement by written amendment.

Any changes made to construction documents by the CLIENT, or by the CLIENT'S representative'S, are strictly prohibited without the knowledge and written consent of the CONSULTANT. The CONSULTANT shall be released from any liability resulting from damages, injuries, and or death from the unauthorized alteration of construction documents.

15. EXISTING AND/OR HIDDEN CONDITIONS:

A condition is hidden if it is concealed by existing finishes or features or if it cannot be investigated by reasonable visual observation. If the CONSULTANT has reason to believe that such a condition may exist, the CONSULTANT will notify the CLIENT who then shall authorize and pay for all costs associated with the investigation of such a condition and, if necessary, all costs necessary to correct said condition. If (1) the CLIENT fails to authorize such investigation or correction after due notification, or (2) the CONSULTANT has no reason to believe that such a condition exists, the CLIENT is responsible for all risks associated with this condition, and the CONSULTANT shall not be responsible for the existing condition nor any resulting damages to persons or property. Further, the CONSULTANT will not be required to execute any document that would result in certifying, guaranteeing or warranting the existence of conditions whose existence the CONSULTANT cannot reasonably ascertain.

16. STANDARD OF CARE:

Services provided by the Design Professional under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.

In addition, the CLIENT agrees, to the fullest extent permitted by law, to indemnify and hold the CONSULTANT harmless from any loss, claim or cost, including reasonable attorney'S fees and costs of defense, arising or resulting from the performance of such services by other persons or entities and from any and all claims arising from modifications, clarification, interpretations, adjustments or changes made to the Contract Documents to reflect changed field or other conditions, except for claims arising from the sole negligence or willful misconduct of the CONSULTANT.

GRIGGS & MALONEY, INC. STANDARD TERMS AND CONDITIONS, CONT'D

17. DESIGN WITHOUT CONSTRUCTION SERVICES:

It is understood and agreed that the CONSULTANT's Basic Services under this Agreement do not include project observation or review of the CONTRACTOR's performance or any other construction phase services, and that such services will be provided by the CLIENT or by another party selected at the sole discretion of the CLIENT. Further, the CLIENT assumes all responsibility for interpretation of the Contract Documents and for construction observation and/or supervision and waives any claims against the CONSULTANT that may be in any way connected thereto.

In addition, the CLIENT agrees, to the fullest extent permitted by law, to indemnify and hold the CONSULTANT harmless from any loss, claim or cost, including reasonable attorney's fees and costs of defense, arising or resulting from the performance of such services by other persons or entities and from any and all claims arising from modifications, clarification, interpretations, adjustments or changes made to the Contract Documents to reflect changes field or other conditions, except for claims arising from the sole negligence or willful misconduct of the CONSULTANT.

If the CLIENT requests in writing that the CONSULTANT provide any specific construction phase service and if the CONSULTANT agrees in writing to provide such services, then the CONSULTANT shall be compensated for ADDITIONAL Services as provided in the Agreement.

18. COST CONTROL:

Opinions of probable construction cost, financial evaluations, feasibility studies, economic analyses of alternative solutions and utilitarian considerations of operations and maintenance costs prepared by CONSULTANT hereunder will be made on the basis of CONSULTANT's experience and qualifications and represent CONSULTANT's best judgment as an experienced and qualified professional. It is recognized, however, that CONSULTANT does not have control over the cost of labor, material, equipment or services furnished by others or over market conditions or contractors' methods of determining their prices, and that any utilitarian evaluation of any facility to be constructed or work to be performed on the basis of the report must of necessity be speculative until completion of its detailed design. Accordingly, CONSULTANT does not guarantee that proposals, bids or actual costs will not vary from opinions, evaluations or studies submitted by CONSULTANT to CLIENT hereunder.

END OF STANDARD TERMS AND CONDITIONS